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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9
10 UNITED STATES OF AMERICA,

No. CR 09-110 SI

11 Plaintiff,

**ORDER GRANTING UNITED STATES'
MOTION TO QUASH SUBPOENA**

12 v.

13 STEVEN LEUNG,

14 Defendant.
_____ /

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16 The United States has filed a motion to quash subpoenas served on FBI Agent Susan Sivok and
17 retired FBI Agent Greg Haynie. Docket No. 1039. Defendant seeks to have Agent Sivok testify at trial
18 regarding her “knowledge of the steps that the Government took – or did not take – to investigate the
19 TFT-LCD panel industry between the time that Samsung self-reported in January, 2006 and the
20 Government raided AUOA’s and CMO’s offices in December, 2006.” Docket No. 1050 at 2:28-3:2.
21 Defendant also seeks Agent Sivok’s testimony “about the manner by which the Government confiscated,
22 organized, and Bates stamped the voluminous documents seized from AUOA’s and CMO’s offices.”
23 *Id.* at 3:3-4. Defendant also asserts that Agent Sivok “can give the jury an approximate number of
24 documents produced and seized in total, from which they can compare the number of documents
25 relevant to Defendant Steven Leung.” *Id.* at 3:6-7. In the event that Agent Sivok is unable to testify,
26 defendant requests that retired Agent Haynie be required to testify in her stead.

27 The United States moves to quash the subpoenas on the ground that neither agent has relevant
28 information for purposes of this trial. The United States contends “[n]either the search warrant

1 affidavits of agents Sivok and Haynie, nor their familiarity with the procedural history of the case, nor
2 the investigative procedures of the FBI are relevant to the issues being tried to the jury.” Docket No.
3 1039 at 2:19-21. The government argues that the relevant issues are whether defendant joined the
4 conspiracy and whether he has any legitimate defense to the charge.

5 The government also asserts that even if the agents were required to testify, they would not be
6 able to provide testimony on the subjects identified by defendant. The United States has filed the
7 declarations of Heather Tewksbury and Agent Sivok which state: (1) Agent Sivok was first assigned to
8 the Antitrust Division’s TFT-LCD investigation in October of 2006, and she assisted the division in its
9 efforts to get a warrant to search the Houston office of AUOA, and she also assisted in executing the
10 search warrant and search, which took place in December of 2006; (2) Agent Haynie submitted an
11 affidavit supporting the application for a warrant to search CMO’s San Jose office, and he helped
12 execute the search in December 2006; (3) neither agent had much, if any, involvement in the
13 investigation following the day of the searches, and neither agent testified before the grand jury; (4) the
14 review, organization and any labeling of both the hard copy and electronic records seized from AUOA
15 was done by Antitrust Division personnel, and Agent Sivok does not have any knowledge of these
16 matters; (5) Agent Sivok does not know the number of documents seized from AUOA, nor does she
17 have any knowledge of the volume of documents provided to the Antitrust Division; (6) the FBI
18 (including both agents) did not have anything to do with Bates numbering of any documents; and (7)
19 the vast majority of documents produced during the investigation were produced directly to the Antitrust
20 Division.

21 The Court concludes that defendant has not shown that either agent can provide testimony
22 relevant to the issues in this case. Defendant has not articulated how the government’s investigation
23 (or lack thereof) in 2006 is relevant to the defense of this case. *Cf. United States v. Patrick*, 248 F.3d
24 11, 22 (1st Cir. 2001) (“The phrase ‘inadequacy of the police investigation’ covers a variety of different
25 problems and cuts across the full spectrum of relevant and irrelevant evidence. Certain
26 inadequacies—for example, those that go to the chain of custody or the preservation of evidence—may
27 undercut the reliability of physical evidence against the accused. . . . Merely showing that an
28 investigation is sloppy does not establish relevance.”); *United States v. Howell*, 231 F.3d 615, 625 (9th


1 Cir. 2000) (finding a *Brady* violation where “the fact that not one, but two separate police reports
2 contained an identical error as to a critical piece of evidence certainly raises the opportunity to attack
3 the thoroughness, and even good faith, of the investigation.”). Nor has defendant explained how “the
4 manner by which the Government confiscated, organized, and Bates stamped the voluminous documents
5 seized from AUOA’s and CMO’s offices” is relevant. The Court previously denied a motion to suppress
6 the evidence seized from the AUOA office. Moreover, the government states that it is unlikely that any
7 of the evidence gathered during the searches of AUOA’s and CMO’s offices will be admitted at trial
8 as none of the approximately 337 exhibits admitted during the first trial were documents seized during
9 the two searches.

10 Further, the record shows that the agents are not knowledgeable about the subjects identified by
11 defendant. Agent Sivok did not become involved in the investigation until October 2006, and her
12 involvement ended shortly after the December 2006 execution of the search warrant on AUOA’s office.
13 Similarly, Agent Haynie was involved in the preparation and execution of the search warrant on CMO’s
14 office, and he had little if any involvement in the investigation following the day of the search. Finally,
15 neither agent would be able to provide any testimony about the Bates stamping of documents.

16 Accordingly, for good cause shown the Court GRANTS the government’s motion and
17 QUASHES the subpoenas.

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19 **IT IS SO ORDERED.**

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21 Dated: December 6, 2012

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24 SUSAN ILLSTON
25 United States District Judge
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